

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

WHOLESALE ALLIANCE, LLC, )  
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Plaintiff, )  
                                  )  
                                  )  
vs.                            )                           Case No. 4:18CV01015 AGF  
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                                  )  
EXPRESS SCRIPTS , INC., )  
                                  )  
                                  )  
Defendant. )

**MEMORANDUM AND ORDER**

This matter is before the Court on Plaintiff's post-judgment motion (ECF No. 40) to amend the Court's Order of Dismissal (ECF No. 39) to make the dismissal of Plaintiff's federal antitrust claims without prejudice, and for leave to file an amended complaint.<sup>1</sup> Although it did not do so before the entry of judgment, Plaintiff has now submitted a proposed amended complaint.

It is well-settled that plaintiffs remain free where dismissal orders do not grant leave to amend to seek vacation of the judgment under Rules 59 and 60(b) and offer an amended complaint in place of the dismissed complaint. But it is also well-settled that district courts in this circuit have considerable discretion to deny a timely post judgment motion for leave to amend because such motions are disfavored, but may not ignore the Rule 15(a)(2) considerations that favor affording parties an opportunity to test their claims on the merits.

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<sup>1</sup> Plaintiff asserts that while it "believes the Court erred in dismissing the antitrust claims, [it] does not challenge dismissal itself in the present filing, reserving that challenge instead for appellate review, as appropriate." ECF No. 40 at 2 n.1. Thus, this motion is solely "directed to the prejudicial effect of dismissal and [Plaintiff's] request for leave to file its proposed Amended Complaint." *Id.*

*United States v. Mask of Ka-Nefer-Nefer*, 752 F.3d 737, 742–43 (8th Cir. 2014). Where a “complaint on its face shows that no cause of action can be stated against the defendants and that a dismissal with leave to amend would serve no useful purpose, . . . the district court [acts] within its discretion in dismissing the complaint with prejudice.” *Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984).

Upon careful consideration of Plaintiff’s arguments in support of amendment, Plaintiff’s proposed amended complaint, and Defendant’s opposition thereto, the Court concludes that leave to amend is not warranted here. The allegations that Plaintiff has added to the proposed amended complaint do not contain new non-conclusory and material facts that would alter the Court’s prior analysis. Indeed, Plaintiff made many of the same or substantially similar allegations in response to Defendant’s motion to dismiss, which Court duly considered before finding that Plaintiff failed to state a federal antitrust claim. As such, the proposed amended complaint is futile, and the Court will deny Plaintiff’s motion. *See Zutz v. Nelson*, 601 F.3d 842, 850 (8th Cir. 2010) (“Denial of a motion for leave to amend on the basis of futility means the district court has reached the legal conclusion that the amended complaint could not withstand a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure.”); *Pet Quarters, Inc. v. Depository Tr. & Clearing Corp.*, 559 F.3d 772, 782 (8th Cir. 2009) (“The district court did not err or abuse its discretion in concluding that amendment would be futile and in dismissing with prejudice.”).

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff Wholesale Alliance, LLC D/B/A

Pharmacy First's Combined Motion to Amend Order of Dismissal and for Leave to File

Amended Complaint is **DENIED**. ECF No. 40.

*Audrey G. Fleissig*  
AUDREY G. FLEISSIG  
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of May, 2019.